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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,911	02/27/2001	Walid N Aboul-Hosn	9261.16626-P	3653

7590

02/14/2003

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EXAMINER

GHAFOORIAN, ROZ

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 02/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/763,911

Applicant(s)

ABOUL-HOSN ET AL.

Examiner

Roz Ghafoorian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION*****Drawings***

This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

***Claim Rejections - 35 USC § 103***

1. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over as U.S Patent No.6293920 to Sweezer et al, and further in view of U.S Patent No.6508777 to Macoviak et al.

Sweezer discloses a catheter system and method for providing cardiopulmonary bypass pump support during heart surgery. Sweezer's system has many components one of which is the subclavian catheter. A first cannula 19 defining a first flow path 48, and a second cannula 21 sized and configured to slidably receive at least a portion of the first cannula to form a lumen, the lumen define a second flow path 38. This device consists of two pathways that are slidably coupled to one another in a coaxial arrangement.

The two pathways are dimensioned to extend, in use, into the respective first and second predetermined location through a single incision from the vascular system of the patient. The subclavian catheter consists of a guide wire and a pressure sensor, as well as a bend for directing the flow path. Referring to fig 1, the subclavian catheter is capable of pumping oxygenated blood in to the patient via tube 21 to one location and removes blood via line 19 from a different location. Both paths 21 and 19 are introduced through a single incision.

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Sweezer does not teach a lumen between the first and second cannula.

However, the idea of two cannula become placed one in another in a manner so a lumen exists between the first and second cannula is very well known in the art and Macoviak is only one example which teaches a circulatory support system with two cannula where a lumen exist between the first and second cannula.

At the time the invention was made, it would haven been an obvious matter of design choice to a person or ordinarily skill in the art to have modified the lumens so cavity would fall between the first and second cannula because Applicant has not discoed that lumen between the first and second cannula provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the lumen of the second cannula not forming a cavity between the first and second lumen because both the applicant's invention as well as Sweezer perform the same function.

Therefore it would have been an obvious matter of deigns choice to modify Sweezer to obtain the invention as specified in claims 1, 36-38.

### ***Response to Arguments***

2. Applicant's arguments filed 12-3-2002 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1-38 have been considered but are moot in view of the new ground(s) of rejection. Macoviak teaches the claimed configuration of the lumen in relation to the two cannula. As the applicant himself has

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several different configurations of the two cannulas in relation to each other, the new limitation of a lumen between the first and second cannula does not make this invention unique or patentable over the art, as demonstrated by Macoviak.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S Patent No. 5536242 to Willard et al, U.S Patent 5957839 to Kruse et al, and U.S Patent No.5971973 to Peters.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

RG  
February 5, 2003



MICHAEL J. HAYES  
PRIMARY EXAMINER